



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 468  
Hamlin, WV 25523

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

April 16, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 18, 2009. Your hearing request was based on the Department of Health and Human Resources' action to terminate your medical eligibility for the SSI-Related Medicaid Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the SSI-Related Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: In order to be considered disabled, an individual over 18 must be unable to engage in any substantial gainful employment by reason of any severe medically determined physical or mental impairment which can be expected to result in death or which can be expected to last for a continuous period of not less than twelve months. (WV Income Maintenance Manual Section 12.2 (A))

The information which was submitted at your hearing revealed that, in the opinion of the State Hearing Officer, you do not meet the above stated definition.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate your medical eligibility for the SSI-Related Medicaid Program.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Susan Godby, [REDACTED] DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

-----,

**Claimant,**

**v.**

**Action Number: 08-BOR-1187**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 18, 2009 for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on March 18, 2009 on a timely appeal, filed March 21, 2008. It should be noted that this hearing was previously scheduled by another Hearing Officer for May 5, 2008 and again on November 13, 2008, but was continued at the Claimant's request. The hearing request was transferred to this Hearing Officer on February 3, 2009.

It should be noted here that the Claimant's benefits have been continued pending the outcome of this hearing.

**II. PROGRAM PURPOSE:**

The Program entitled SSI-Related Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The SSI Related Medicaid Program is a segment of the Medicaid Program available to individuals who meet the requirement of categorical relatedness by qualifying as either aged disabled, or blind as those terms are defined by the Social Security Administration for purposes of eligibility for SSI.

### **III. PARTICIPANTS:**

-----, Claimant

Susan Godby, Department Hearing Representative

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Claimant meets the eligibility requirement of categorical relatedness for SSI Related Medicaid by qualifying as a disabled person as defined by the Department's policy.

### **V. APPLICABLE POLICY:**

WV Income Maintenance Manual Section 12.2(A)

20 CFR 416.905 and 416.920, 20 CFR 404.1508

Sections 9.04, 12.08, 11.03, 11.02, 12.06 and 12.09, 20 CFR Part 404, Subpart P. App. 1 & 2

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

DHS-1 Hearing/Grievance Record Form

DHS-2 Notification letter dated March 13, 2008 and copy of Claimant's hearing request

DHS-3 WV Income Maintenance Manual Section 12.2

DHS-4 Copy of MRT form DFA-RT-3M and ES-RT-3

DHS-5 Copy of Medical Records submitted to Medical Review Team for review

DHS-6 Department's Summary

#### **Claimant's Exhibits:**

None

### **VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing a periodic re-evaluation for Medicaid based on his disability in February 2008, which required the Medical Review Team (MRT) to reconsider his medical eligibility. The Medical Review Team requested that psychiatric information to be submitted for review.

- 2) The medical information was obtained and the case was submitted (DHS-5) to the MRT for review. The MRT returned a decision to the Department on March 3, 2008 indicating the Claimant “is not mentally disabled”. The decision included the following pertinent information:

Deny, CT (client) is diagnosed Alcohol Dependence, Sedative Dependence, Mood Disorder NOS and Anxiety Disorder NOS – 15A (DHS-5) indicates CT is not disabled psychiatrically.

- 3) The Department sent the Claimant a termination notice dated March 21, 2008 which included the following pertinent information:

YOUR APPLICATION FOR WEST VIRGINIA  
MEDICAID HAS BEEN DENIED EFFECTIVE  
04/01/08

HERE IS WHY: MEDICAL REVIEW TEAM DID  
NOT DEEM YOU AS DISABLED OR  
INCAPACITATED.

The Claimant requested a fair hearing on March 21, 2008 as a result of this notice.

- 4) The case was resubmitted to MRT for reconsideration on March 21, 2008. On April 24, 2008 the MRT requested additional medical in the form of a General Physical. The General Physical medical report (DHS-5) was received by the Department on June 26, 2008 and sent to the MRT.
- 5) The MRT again requested additional medical in the form of a psychiatric evaluation on July 20, 2008. The Department received this report (DHS-5) on September 17, 2008 and resubmitted to the MRT.
- 6) The MRT returned a decision (DHS-4) to the Department on October 29, 2008 again indicating the Claimant is not disabled mentally or physically. The decision included the following pertinent information:

Deny – CT (client) is dxed (diagnosed) Mood D/O NOS and Alcohol Abuse. He exhibits moderate functional limits which would not prevent work activities.

- 7) Testimony from the Claimant revealed he is forty-two (42) years of age currently, and was forty-one (41) years of age at the time of the MRT decision. He has a twelfth grade high school education and one year of college. He was taking “pre-med” but got “burnt out” and stopped attending classes. He has had some training in the carpentry field of work, and previously worked until 2001 building houses. He is single and lives with his mother and sister, and has no military experience. He applied for Supplemental Security Income (SSI) but was denied in July 2008. He has not appealed this decision. His stated medical problems include seizures,

hypothyroidism, cyst of the spine, depression and “nerves”. He states his doctor “doesn’t want his feet off the ground because of his seizures”. He states it has been three (3) years since he has had a seizure and he takes medication to prevent them.

- 6) The State's definition of disability for Medicaid is found in WV Income Maintenance Manual Section 12.2 and reads as follows:

An individual who is age 18 or over is considered to be disabled if he is unable to engage in substantial gainful employment by reason of any medically determined physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months or can be expected to result in death.

- 7) The State's definition of disability for Medicaid is the same as the definition used by the Social Security Administration in determining eligibility for SSI based on disability which is found at 20 CFR 416.905.

- 8) There is a five-step sequence of questions to be addressed when evaluating a person's ability to perform substantial gainful activity for purposes of SSI; these are set forth in 20 CFR 416.920.

- 9) The first sequential step is:

Is the person performing substantial gainful activity as defined in 20 CFR 416.910? If so, the person is not disabled.

- 10) The Claimant is not employed.

- 11) The second sequential step is:

If not, does a severe impairment exist which has lasted or can be expected to last one year or result in death? If not, the person is not disabled.

- 12) The Psychiatric Summary form DFS-RT-15a (DHS-5) completed in December 2008 indicates a diagnosis of ETOH Dependence, Sedative Dependence, Mood Disorder NOS, and Anxiety Disorder NOS. The psychiatrist has indicated that the Claimant is not disabled psychiatrically, and “needs treatment not disability”. The prognosis is listed as “guarded.

- 13) The General Physical form DFS-RT-5 (DHS-5) completed May 8, 2008 by Dr. [REDACTED] indicates the Claimant has Seizure Disorder, Mood Disorder, NOS, Alcohol Dependence, Hypothyroid – Acquired, and Hyperlipidemia. In her summary of conclusions she provides that his mental health condition and seizure disorder prevent him from working at any gainful employment. She indicates he is unable to work full-time or perform any other work in all situations. Under the section marked

“Duration of inability to work full time” she marked “other” but did not explain as the form directs.

- 14) The Psychiatric Evaluation completed August 18, 2008 (DHS-5) provides the following pertinent information:

Axis I: Mood disorder, NOS, Alcohol Abuse, 305  
Axis II: V71.09.  
Axis III: Hypothyroidism, seizure disorder  
Axis IV: Mild psychosocial stressors  
Axis V: GAF = 60 (Global Assessment of Functioning)

The GAF score of sixty (60) is indicative of moderate impairment for this individual. The evaluator also added that she suggested he follow up with her as directed by the Department.

- 15) The Psychiatrist’s Summary form DFA-RT-15a (DHS-5) completed August 2008 indicates a diagnosis of Mood Disorder, NOS, a prognosis as “unknown – is being treated by Dr. [REDACTED] and lists length of disability and employment limitations as “not applicable”.

- 16) The third sequential step is:

If the person has a severe impairment, is the impairment a listed impairment (under 20 CFR Part 404, Subpart P, App. 1) or its medical equivalent? If so, the person is disabled.

- 17) Section 12.09, 20 CFR Part 404 Subpart P, App. 1 reads:

Substance Addiction Disorders: Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

- A. Organic mental disorders. Evaluate under 12.02
- B. Depressive syndrome. Evaluate under 12.04
- C. Anxiety disorders. Evaluate under 12.06
- D. Personality disorders. Evaluate under 12.08
- E. Peripheral neuropathies. Evaluate under 11.14
- F. Liver damage. Evaluate under 5.05
- G. Gastritis. Evaluate under 5.00
- H. Pancreatitis. Evaluate under 5.08
- I. Seizures. Evaluate under 11.02 or 11.03

- 18) Section 12.06, 20 CFR Part 404 Subpart P, App. 1 reads:

Anxiety Related Disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
  - A. Motor tension; or
  - B. Autonomic hyperactivity; or
  - C. Apprehensive expectation; or
  - D. Vigilance and scanning;

Or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

- B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
  2. Marked difficulties in maintaining social functioning; or
  3. Marked difficulties in maintaining concentration, persistence, or pace; or

- 4. Repeated episodes of decompensation, each of extended duration.  
OR
- C. Resulting in complete inability to function independently outside the area of one's home.

19) Section 11.02, 20 CFR Part 404, Subpart P, Appendix 1 reads:

Epilepsy - - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month in spite of at least 3 months of prescribed treatment. With:

- A. Daytime episodes (loss of consciousness and convulsive seizures)  
Or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

20) Section 11.03, 20 CFR Part 404, Subpart P, Appendix 1 reads:

Epilepsy - - nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

21) Section 12.08, 20 CFR Part 404, Subpart P, Appendix 1 reads:

Personality Disorders: A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

- A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:



1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

22) Section 9.04, CFR Part 404, Subpart P, Appendix 1 reads:

Hypoparathyroidism. With

- a. Severe recurrent tetany; or
- b. Recurrent generalized convulsions; or
- c. Lenticular cataracts.

24) None of the medical evidence submitted meets the “severe impairment” requirement as provided by policy.

25) The fourth sequential step is:

If not, what is the person’s residual functional capacity, and can that person still perform his or her former work? If so, the person is not disabled.

26) The medical evidence submitted for review does not substantiate the inability of the Claimant to perform his past work as a carpenter. The Claimant has not had a seizure in at least three (3) years, and no evidence was provided to indicate his other medical conditions would prevent him from performing carpentry work.

27) The fifth and final step is:

If not, can the person do any other work, based upon the combined vocational factors of residual functional capacity, age, education and past work experience? If not, the person is disabled.

- 28) The Claimant is forty-two (42) years of age with a twelfth grade education in addition to one year of college, and has received training in the field of carpentry.
- 29) According to rule #204 from 20 CFR Part 404, Subpart P, App. 2, a person limited to heavy work ordinarily will not have a severe impairment or will be able to do their past work –either of which would have already provided a basis for a decision of “not disabled”.
- 30) 20 CFR 404.1508 Code of Federal Regulations:  
  
Impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms and laboratory findings, not only by your statement of symptoms. (404.1508)

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy requires that the Claimant must have a severe impairment which has lasted or can be expected to last one year or result in death.
- 2) There was no convincing evidence or testimony presented during the hearing that would result in a change in the Department’s determination that the Claimant’s condition does not meet the definition of disability.

#### **IX. DECISION:**

It is the finding of the State Hearing Officer that the Claimant does not meet the definition of disability. The Department is upheld in the decision to deny the claimant’s medical eligibility for the SSI-Related Medicaid Program.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 16<sup>th</sup> Day of April, 2009**

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**Cheryl Henson  
State Hearing Officer**